

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

NICHOLAS A. FLYNN, an individual,

Plaintiff,

vs.

COMMUNITY INTEGRATED
SERVICES, INC., a Washington
corporation; JOAN CARDWELL; JIM
SHISSLER; LEAH HAYDON; and
A.J. ZACHMAN,

Defendants.

NO. 1:15-cv-03103-MKD

ORDER ON DISCOVERY
MOTIONS

ECF Nos. 54, 61, 63, 65

BEFORE THE COURT are four motions, with accompanying responses and replies: (1) Defendants' motion for protective order and injunctive relief (ECF No. 54); (2) Defendants' motion to compel plaintiff's deposition (ECF No.

1 61); (3) Plaintiff's motion to compel (ECF No. 63); and (4) Plaintiff's motion to
2 issue subpoenas for depositions (ECF No. 65).

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4 On February 26, 2016, the Court conducted a hearing on these motions.
5 ECF No. 60. Plaintiff appeared pro se. Shawna Lydon appeared for Defendants.
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7 The Court has considered the parties' pleadings and arguments, and is fully
8 informed. After review, the Court enters the following order:
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10 **DISCOVERY STANDARDS**

11 The purpose of discovery is to make trial "less a game of blind man's bluff
12 and more a fair contest with the basic issues and facts disclosed to the fullest
13 practicable extent possible." *United States v. Proctor & Gamble*, 356 U.S. 677,
14 683 (1958), and to narrow and clarify the issues in dispute, *Hickman v. Taylor*,
15 329 U.S. 495, 501 (1947).
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17 Fed. R. Civ. P. 26(b)(1) establishes the scope of discovery and states in
18 pertinent part:
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20 Parties may obtain discovery regarding any nonprivileged matter that is
21 relevant to any party's claim or defense and proportional to the needs of the
22 case, considering the importance of the issues at stake in the action, the
23 amount in controversy, the parties' relative access to relevant information,
24 the parties' resources, the importance of the discovery in resolving the
25 issues, and whether the burden or expense of the proposed discovery
outweighs its likely benefit. Information within this scope of discovery
need not be admissible in evidence to be discoverable.

1 Fed. R. Evid. 410 defines “relevant evidence” as “evidence having any tendency
2 to make the existence of any fact that is of consequence to the determination of
3 the action more probable or less probable than it would be without the evidence.”

4 Fed. R. Evid. 402 provides that all relevant evidence is admissible except as
5 otherwise provided by the U.S. Constitution, Act of Congress, or applicable rule
6 of the Federal Rules of Evidence.
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9 Finally, on motion or on its own, the court must limit the frequency or
10 extent of discovery otherwise allowed by these rules or by local rule if it
11 determines that: (i) the discovery sought is unreasonably cumulative or
12 duplicative, or can be obtained from some other source that is more convenient,
13 less burdensome, or less expensive; (ii) the party seeking discovery has had ample
14 opportunity to obtain the information by discovery in the action; or
15 (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).
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17 Fed. R. Civ. P. 26(b)(2)(C).
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20 The party resisting discovery carries the heavy burden of showing why
21 discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th
22 Cir. 1975). The Court has broad discretion in controlling discovery, *see Little v.*
23 *City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988), and in determining whether
24 discovery is burdensome or oppressive. The Court may fashion any order which
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1 justice requires to protect a party or person from undue burden, oppression, or
2 expense. *United States v. Columbia Board. Sys., Inc.*, 666 F.2d 364, 369 (9th Cir.
3 1982) *cert. denied*, 457 U.S. 1118 (1982).
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5 To obtain a protective order, the party resisting discovery or seeking
6 limitations must, under Rule 26(c), show good cause for its issuance.
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8 Specifically, the moving party must make a clear showing of a particular and
9 specific need for the order. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th
10 Cir. 1975).
11

12 DISCUSSION

13 A. Defendants' Motion for Protective Order (ECF No. 54)

14 Defendants seek protective orders requesting the following relief: (1) an
15 order requiring Plaintiff to note Defendants depositions in Spokane, Washington,
16 instead of Yakima, Washington; (2) an order requiring Plaintiff to schedule at
17 least two depositions per day; and (3) an order precluding Plaintiff from
18 communicating with CIS's clients.
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20 First, Defendants seek a protective order requiring that Defendants be
21 deposited in Spokane County, or within 100 miles of where they reside. ECF No.
22 54 at 7. Plaintiff seeks to depose Defendants in Yakima, Washington. ECF No.
23 67 at 2, 5-8.
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1 Under Fed. R. Civ. P. 45(c)(1)(A), a subpoena may command a person to
2 attend a deposition within 100 miles of where they reside, are employed, or
3 regularly transact business. However, the rule is more expansive for a party or an
4 officer of a party. Fed. R. Civ. P. 45(c)(1)(B) provides that a party or a party's
5 officer may be commanded to appear at a deposition "within the state where the
6 person resides, is employed, or regularly transacts business." Here, the
7 individuals at issue are named defendants and all reside in Washington. As a
8 result, the Court DENIES Defendants' motion for a protective order. Pursuant to
9 Rule 45(c)(1)(B), the Plaintiff is permitted to note Defendants' depositions in
10 Yakima, Washington. Plaintiff will bear the expense of deposing these parties
11 and any other witnesses he wishes to depose.

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16 Next, Defendants seek a protective order requiring Plaintiff to schedule at
17 least two depositions a day to minimize travel expenses for Defendants and
18 defense counsel. According to Fed. R. Civ. P. 30(d)(1), a party may depose a
19 witness for one day, up to seven hours. During the hearing, Plaintiff indicated
20 that he did not believe that the depositions will take a full day, and in fact,
21 Plaintiff estimated that they would take approximately two hours. The Court
22 GRANTS the motion in part and ORDERS that Plaintiff schedule two depositions
23 per day, with the following exception. Plaintiff is permitted to conduct a
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1 deposition for seven hours. If a particular deposition has not concluded, despite
2 the scheduling of another deposition that day, Plaintiff is permitted to conclude
3 (within seven hours) the first deposition. The Court ORDERS that the parties file
4 a status report on March 7, 2016, detailing the progress they have made in
5 scheduling the depositions of Defendants.
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8 Third, Defendants seek an order precluding Plaintiff from meeting with or
9 interviewing CIS clients due to the terms of Plaintiff's employment contract, due
10 to CIS clients' being vulnerable adults suffering from cognitive and
11 developmental disabilities and mental health issues, outside of a properly-noted
12 deposition. ECF No. 54 at 8-9. At the hearing, Plaintiff indicated he wished to
13 contact CIS clients to maintain a personal relationship with them, as well as at
14 some point interview them about the subject matter of the litigation. Plaintiff
15 stated he did not intend to interview CIS clients regarding the subject matter of
16 the litigation without Defendants' counsel present.
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19 The Court is cognizant of the fact that this case presents unique
20 circumstances. CIS clients are vulnerable adults, who suffer from various and
21 varying development disabilities, mental health issues, and behavioral problems.
22 In addition, Plaintiff, while employed at CIS, had access to substantial
23 information regarding the clients' medical and mental health circumstances and
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1 other personal information. Some of the legal guardians and adoptive parents of
2 CIS clients have objected to Plaintiff interacting with CIS clients. However, the
3 Court is also sensitive to the fact that depositions are a more costly mechanism to
4 acquire discovery and relevant information in litigation. Plaintiff is proceeding
5 pro se and has expressed concerns regarding his ability to afford the cost of a
6 court reporter and/or location fee to conduct a deposition.
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9 The Court notes Plaintiff seeks what appears to be arguably relevant
10 evidence, given the nature of the claims and responses in the answer.
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12 Accordingly, **IT IS ORDERED:**

13 Defendants' motion for protective order, ECF No. 54, is GRANTED in
14 part. Plaintiff is permitted to interview the clients of CIS, with the following
15 conditions:
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17 (1) Defendants' counsel must either be present or waive presence at an
18 interview with a CIS client.
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20 (2) If the client has a guardian, or a person with a power of attorney, they
21 must also be present for any interview by Plaintiff.
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23 (3) The clients (or their legal guardians) may decline for the client to be
24 interviewed. If the clients do not wish to be interviewed, Plaintiff will need to
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1 conduct their depositions at his own expense, with the same requirements as
2 outlined above.

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4 (4) Per the parties' agreement at the hearing, if any deposition of CIS's
5 clients are scheduled, the Court requires that the undersigned judicial officer's
6 schedule be consulted so that the judicial officer may be present to rule on any
7 objections during the course of depositions. The Court will seek space in the
8 federal courthouse in Spokane, but the party taking the deposition is otherwise
9 responsible for the costs of these depositions.
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12 Plaintiff may interview or, if necessary, depose clients of CIS, but only as
13 outlined herein.
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15 To the extent Plaintiff has asked the Court to make determinations with
16 respect to Plaintiff's future contact with, and personal relationships to, clients of
17 CIS, the Court declines to address that matter. Those issues are outside the
18 Court's purview, except insofar as it relates the discovery issues described herein.
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20 **B. Defendants' Motion to Compel Deposition of Plaintiff (ECF No. 61)**

21 Defendants move the Court to compel the deposition of Plaintiff within 14
22 days, contending that Plaintiff has refused to be deposed until all other discovery
23 is complete, unless Defendants assure they will not seek any additional deposition
24 of Plaintiff. ECF No. 61 at 7-8. Plaintiff opposes the motion, requesting that his
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1 deposition be scheduled after all other written discovery is complete and
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3 Defendants have been deposed, unless Defendants agree to depose him only once.
4 ECF No. 69 at 2-3.

5 Fed. R. Civ. P. 26(d)(2)(A) provides that the discovery methods set forth in
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7 the rules may be used in any sequence. Fed. R. Civ. P. 26(d)(2)(B) further
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9 provides that discovery by one party does not require another party to delay its
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11 discovery. Accordingly, Plaintiff may choose the order of his discovery, but he
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13 may not dictate the order of Defendants' discovery. The Court GRANTS
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15 Defendant's motion to compel the deposition of the Plaintiff. At the hearing, the
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17 Court ordered the parties to mutually agree on a date (within 30 days) and
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19 location for Plaintiff's deposition. The parties chose March 18, 2016, in Yakima.
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21 Accordingly, the Court ORDERS that Plaintiff's deposition be conducted on
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23 March 18, 2016, in Yakima, at a specific location to be determined by
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25 Defendants. This date may be changed only by consent of all parties or by Court
order.

21 In the event Defendants seek an additional deposition of Plaintiff,
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23 Defendants must request leave of court. *See* Fed. R. Civ. P. 26(b)(2),
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25 30(a)(2)(A)(ii).

1 **C. Plaintiff's Motion to Compel (ECF No. 63)**

2 Plaintiff alleges Defendants have failed to provide complete responses to
3 interrogatories (A-G, M-R) and requests for production of documents (A, B, D, E,
4 F, I and J). Defendants respond that they were never served with ECF No. 64-1,
5 the document Plaintiff relies on in his motion to compel. ECF No. 71 at 1.
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7 Counsel for Defendants acknowledged at the hearing that they were served
8 with a document containing the same content Plaintiff alleges, but under a
9 different title. Defendants further contend that Plaintiff's interrogatories
10 contained numerous discrete subparts that caused Plaintiff to exceed the 25
11 interrogatories permitted by Fed. R. Civ. P. 33(a)(1). Defendants contend they
12 answered the first 25 of the interrogatories.
13

14 After consideration, Plaintiff's motion to compel, ECF No. 63, is
15 GRANTED in part. First, the Court directs that Plaintiff may serve ten (10)
16 additional interrogatories. Prior to responding to the interrogatories, Plaintiff and
17 Defendants are ordered to confer about the nature of the ten interrogatories. If the
18 parties cannot reach agreement about the number and content of the
19 interrogatories, they are ordered to submit the interrogatories to the Court for
20 review, pursuant to the procedure set forth at the end of this order.
21

1 Second, in the motion to compel, Plaintiff seeks the records of past direct
2 service employees of CIS who were suspected of, or found, sleeping on the job,
3 and any ensuing action or inaction by CIS. Defendants are directed to inquire of
4 CIS employees, including, but not limited to, the owners, management,
5 supervisors, and human resources department, and/or other persons affiliated with
6 CIS who may have knowledge about the existence and/or location of any such
7 records, and provide any responsive information to Plaintiff.
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11 **D. Plaintiff's Motion to Issue Subpoenas (ECF No. 65)**

12 Plaintiff moves the Court to issue subpoenas for the deposition testimony
13 for two witnesses. ECF No. 65 at 1-2. Defendants do not object to the witnesses
14 being served subpoenas for testimony, if done in compliance with Fed. R. Civ. P.
15 45, and set for a date that is mutually agreeable to the parties. ECF No. 76 at 1-2.
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18 Fed. R. Civ. P. 45(b) provides that service is to be effectuated by the party
19 seeking the deposition, not the Court. Leave of court is not required to serve the
20 subpoenas. *See* Fed. R. Civ. P. 30 (a)(1). As a result, the Court DENIES
21 Plaintiff's motion as unnecessary. However, given the difficulty the parties have
22 encountered in scheduling the depositions, the Court ORDERS as follows: (1) the
23 parties are to hold a conference call with each of the two named witnesses within
24 seven days; (2) in that conference call, the parties and the witness shall mutually
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1 agree on a date, time, and location for a deposition that comports with the
2 requirements of Fed. R. Civ. P. 45, and the method by which the witness will be
3 served with the deposition subpoena; and (3) the parties are to file a status report
4 with the Court by March 7, 2016, informing the Court of the date, time, location,
5 and service method for each of the two named witnesses.
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8 Future discovery disputes will be addressed as follows: Each party will
9 present to the Court informally a letter brief not to exceed three pages
10 summarizing the dispute. The Court will schedule a conference call with the
11 parties within two working days to resolve the dispute.
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13 Accordingly,
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15 **IT IS ORDERED:**

16 1. Defendants' motion for protective order, **ECF No. 54**, is **granted in**
17 **part.**
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19 2. Defendants' motion to compel Plaintiff's deposition, **ECF No. 61**, is
20 **granted.**
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22 3. Plaintiff's motion to compel, **ECF No. 63**, is **granted in part.**

23 4. Plaintiff's motion for leave to file subpoenas, **ECF No. 65**, is **denied as**
24 **unnecessary.**
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The District Court Executive is directed to file this order and provide

1 copies to plaintiff and defendants' counsel.
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3 DATED this 2nd day of March, 2016.
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5
6 s/ Mary K. Dimke

7 Mary K. Dimke
8 U.S. Magistrate Judge
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